

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:00CR212
)	
v.)	
)	
PABLO STALLINGS,)	MEMORANDUM AND ORDER
)	
Defendant.)	
)	

This matter is before the Court on the defendant's motion for reconsideration (Filing No. 171). The defendant seeks reconsideration of the Court's January 18, 2006, order, which denied the defendant's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 because the defendant had not received Eighth Circuit approval to file a second or successive § 2255 motion (Filing Nos. 169 and 170). The defendant contends that his second § 2255 motion does not constitute a successive habeas petition because it raises a claim based on a 2005 decision from the Eighth Circuit that could not have been raised in his first § 2255 motion, which was filed in November of 2004. Specifically, the defendant contends, citing the Eighth Circuit's recent decision in *Wadlington v. United States*, 428 F.3d 779, 784-785 (8th Cir. 2005) that *Apprendi v. New Jersey*, 530 U.S. 466 (2000), retroactively applies to his case because his conviction and sentence were not yet final when *Apprendi* was announced. The defendant's reliance on *Wadlington*,

however, is inapposite. In *Wadlington*, the Eighth Circuit held that the district should have considered the defendant's *Apprendi* claim on collateral review because *Apprendi* had been decided while the defendant's direct appeal was pending. 428 F.3d at 785. Unlike the defendant *Wadlington*, the defendant in the present case was convicted on July 18, 2001, approximately one year after *Apprendi* was decided in June of 2000. Moreover, the verdict form utilized in the defendant's case contained drug quantities and was thus *Apprendi*-compliant (See Filing No. 70). For these reasons, the Court declines to reconsider its January, 18, 2006, order. Accordingly,

IT IS ORDERED that defendant's motion for reconsideration (Filing No. 171) is denied.

DATED this 9th day of February, 2006.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court